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Arbitration Isn't Automatic: Drafting Enforceable Employment Arbitration Agreements in New Jersey

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Many employers ask employees to sign arbitration agreements. Arbitration is a useful alternative dispute resolution forum that can resolve disputes faster, more privately, and often at lower cost than litigation. These provisions often appear in onboarding paperwork, such as an employment agreement or a standalone document; they should **not** be part of an employee handbook. A recent New Jersey Appellate Division decision, issued October 21, 2026, is a reminder that broad arbitration language may not keep you out of court when an employee brings statutory discrimination claims under the New Jersey Law Against Discrimination (LAD). In **Quintero v. WithumSmith+Brown P.C.**, the Appellate Division affirmed a trial court's refusal to send a former employee's LAD claims to arbitration. While the opinion is unpublished, and therefore not binding on other courts, its reasoning relies on published New Jersey Supreme Court and Appellate Division precedent. Here is what employers need to know.

What Happened in Quintero?

The case hinged on one question: **Did the employer's arbitration clause clearly tell the employee that she was waiving her right to bring discrimination claims in court?**

The employee signed an employment agreement containing a multi-paragraph “Mandatory Arbitration” section. The agreement required arbitration of “any and all Covered Claims,” designated arbitration as the exclusive forum for resolving those claims, and stated that both parties were waiving the right to go to court or have a jury. The problem was that the agreement defined “Covered Claims" as claims that "arise out of or relate in any way to this Agreement.”

A separate paragraph listed five categories of claims that would **not** be arbitrated, including workers’ compensation benefits, unemployment benefits, and National Labor Relations Act claims.

Noticeably, the agreement failed to mention discrimination claims, the LAD, or statutory claims more generally.

After resigning, the employee filed suit in New Jersey Superior Court asserting four counts of violations under the LAD and one New Jersey state wage claim. In response, the employer moved to compel arbitration.

Both sides agreed that an arbitration clause does not need to specifically mention the LAD by name. The employee argued, however, that the agreement was ambiguous and unenforceable against her claims because it did not clearly state that statutory discrimination claims were covered as part of the agreement.

The employer argued that the clause was clear when read as a whole, because the agreement expressly excluded several categories of claims and thus employees should understand that everything not excluded, including LAD claims, must be arbitrated.

The trial court and the Appellate Division disagreed with the employer. An employee's waiver of statutory rights cannot be based on implication drawn from a list of exclusions. The courts held that the agreement failed to clearly communicate that LAD claims had to be arbitrated.

The Legal Standard: Waivers of Statutory Rights Must Be Clear and Unmistakable

New Jersey courts treat arbitration agreements like other contracts. To be enforceable, the terms of the agreement must clearly identify the legal rights being waived. While courts generally favor arbitration, that preference has limits. When an employee is waiving a statutory right, such as the right to bring an LAD claim in court, the waiver must be "clearly and unmistakably established." Courts will not stretch contractual language to reach that result, nor will a court infer that the parties intended to arbitrate discrimination claims "absent the inclusion of an explicit reference to 'all statutory claims.'" The court relied heavily on the New Jersey Supreme Court's decision in **Garfinkel v. Morristown Obstetrics & Gynecology Associates**. In *Garfinkel*, the Court concluded that an arbitration clause only covered claims arising out of the contract itself and failed to include LAD claims where the language of the agreement described covered claims "arising out of, or relating to, this Agreement or the breach thereof." The Supreme Court stated that an enforceable waiver should at least provide that the employee agrees to arbitrate **all statutory claims arising out of the employment relationship or its termination**, though it does not need to list every statute individually. The language of the arbitration clause in *Quintero* closely mirrored the language rejected in *Garfinkel*, and the result was the same.

Key Takeaway from Quintero

New Jersey courts will not assume employees intended to arbitrate LAD claims simply because the cause of action or claim is not specifically excluded from the provision.

If the employer wants statutory discrimination claims arbitrated, the agreement should clearly say so.

Drafting Tips: How to Make an LAD Waiver Stick

If you want your arbitration provision to cover LAD and other statutory claims, state it plainly. An employee reading the agreement should understand that by signing, they are giving up the right to bring those claims in court and before a jury.

The court in *Quintero* pointed to published precedent in **Waskevich v. Herold Law, P.A.**, which illustrates what enforceable language may look like. Generally, a clause should either:

1. Reflect a general understanding of the types of claims being waived; or
2. State that by signing the provision, the employee agrees to arbitrate all statutory claims arising out of the employment relationship or claims based on federal or state statutes.

Vague, contract-focused language is often insufficient. When reviewing your arbitration agreement, ask:

- Does the clause cover disputes arising from the employment relationship and termination, or only disputes arising from the agreement itself?
- Does it expressly cover "all statutory claims?"
- Does it identify claims such as discrimination, harassment, and retaliation?

- Would an employee clearly understand they are waiving the right to sue in court and have a jury decide those claims?
- Is the provision contained in a signed agreement rather than an employee handbook?

Review Your Employment Arbitration Agreements

If you expect your arbitration agreements to cover statutory claims under laws such as the LAD, make sure the agreement clearly tells employees they are waiving the right to pursue those claims in court. Although *Quintero* is unpublished, it follows a long line of published New Jersey decisions emphasizing that waivers of statutory rights must be clear and unmistakable. Employment arbitration agreements remain enforceable under both federal and New Jersey law. However, courts are unlikely to resolve ambiguity in the employer's favor when statutory rights are at stake. **Now is a good time to review any agreement that limits arbitration to claims "arising out of this Agreement."** If you have questions about whether your arbitration provision will withstand judicial scrutiny, or if you need assistance drafting arbitration agreements that effectively cover statutory employment claims, the Employment Law Team at Wilentz is available to help. Contact a member of the Employment Law team today to review your arbitration agreements.

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